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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,383	10/04/2001	Sanjay Kumar	020431.0779	7365
5073	7590	08/16/2004	EXAMINER	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			JASMIN, LYNDIA C	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 08/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/972,383

Applicant(s)

KUMAR ET AL

Examiner

Lynda Jasmin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

1. Pre-Amendment received November 05, 2001 has been acknowledged.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-41 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-76 of copending Application No. 09/398,171. Although the conflicting claims are not identical,

they are not patentably distinct from each other. While the copending application ('171) does not explicitly recite that the one or more processors are collectively operable to receive at least one component ATP request using Hypertext Transfer Protocol (HTTP) as claimed, ('171) has been shown to teach a fulfillment system achieving the same end results of managing available-to-promise data, fulfilling request and communicating component quotation and promises for consolidation. It is the Examiner's position such a teaching to have been obvious to one skilled artisan at the time of the invention since ('171) has been to suggest a network communication that is at least fully functionally equivalent to using a HTTP link as claimed.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 1-19, 21-40 are rejected under 35 U.S.C. 102(a) as being anticipated by Kennedy et al. (WO 11/17795).

Kennedy et al. discloses the fulfillment management system and method comprising: a database (via fulfillment server 16) operable to store product availability information associated with at least one product (see pages 9, 10), and one or more

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processors (via client 12, fulfillment server 16, LFMs 22 and ATP servers 14) collectively operable to: receive at least one component available-to-promise (ATP) request, each component ATP request corresponding to all ATP request line-item for a desired product, retrieve from the database at least a portion of the product availability information associated with the desired product for each component ATP request, determine an ATP response for each component ATP request using the retrieved product availability information, generate a component quotation for each component ATP request according to the corresponding ATP response, and communicate the component quotation for consolidation with other component quotations (see page 7, lines 10-19; claim 1). Further, the one or more processors collectively operable to: receive at least one component quotation confirmation, each component quotation confirmation corresponding to a particular quotation line-item accepted at a client, determine a promise response for each component quotation confirmation using at least a portion of the product availability information in the database, generate a component promise for each component quotation confirmation according to the corresponding promise response, the component promise representing a commitment of product availability for the corresponding accepted product, and communicate the component promise for consolidation with other component promises (see page 7, lines 20-32; claim 8). Kennedy further discloses receiving a component request cancellation associated with a component ATP request or a component promise, date the product availability information associated with the desired product in the database, and generate a component cancellation confirmation for communication (see page 17

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element 23), receiving a component acceptance corresponding to a particular promise line-item accepted at the client, record the component acceptance in the database, and generate a component acceptance confirmation for communication (see page 17 element 20).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 19 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kennedy et al.

Kennedy et al. discloses the structural elements of the claimed invention, but fails to explicitly disclose receiving at least one component available-to-promise (ATP) request using Hypertext Transfer Protocol (HTTP). It is the Examiner's position that Kennedy et al. discloses network 18 which may be a local area network (LAN), a wide area network (WAN), or a global network such as the Internet. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided Kennedy et al. with an HTTP to access information on the Internet since such protocol is standard in establishing connection each time a request is made for accessing resource on World Wide Web page, and the Examiner takes official notice as such.

9. Applicant is reminded that it has been held that the recitation that an element is "operable to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wojcik et al. discloses a system and method for managing order and delivery planning process. Peterson et al. discloses an inventory control network where each vendor can communicate with each other their current inventory quantity. Borders et al. discloses a system and method for scheduling delivery of an order via a wide area network. Lettich et al. discloses a logistics service system, which provide a user with a one-stop shopping for shipping and logistics services. Peachey-Kountz et al.


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discloses providing integrated tools for providing recommendations to users for what is available to promise.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda Jasmin whose telephone number is (703) 305-0465. The examiner can normally be reached on Monday- Friday (8:00-5:30) alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Lynda Jasmin
Primary Examiner
Art Unit 3627

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